*** HONOURABLE THE CHIEF JUSTICE SHRI DEVINDER GUPTA**

HONOURABLE SRI JUSTICE A.GOPAL REDDY

AND

THE HONOURABLE SRI JUSTICE C.V.RAMULU

-

+WA No.1221/2004

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% TWENTY SIXTH DAY OF OCTOBER, TWO THOUSAND FOUR

#Kalla Ramakrishna ..Appellant

Vs.

$ State Election Commission Represented by its Secretary, 3rd Floor, Budhabhavan, M.G. Road, Hyderabad and others ….Respondents

! Counsel for the appellant: Sri M.Krishna Mohan Rao

^ Counsel for the respondents: G.P.for Panchayat Raj

< Gist:

>Head Note

? 1. 2001(4) ALT 389 (DB)

2. 2002(2) ALT 655

3. 2000(3) ALT 61

4. 1998(4) SCC 529 = AIR 1999 SC 1566

5. AIR 1952 SC 64

6. AIR 1985 SC 1233

7. AIR 1988 SC 616

8. AIR 1993 SC 412

9. AIR 1996 AP 37

10. 2001(4) ALT 476 (FB)

11. 2001(6) ALD 136

12. (1998) SCC 1

13. (2004) 3 SCC 553

14. (2001) 10 SCC 740

15. (2003) 2 SCC 107

16. (2003) 8 SCC 567

17. AIR 1983 Karnataka 43

18. 2002 Supp.(2) ALD 230

19. (2003) 4 SCC 739

20. AIR 1978 SC 851

21. AIR 1971 SC 1348

22. AIR 1977 SC 1703

23. AIR 2001 SC 3982

24. 2004 AIR SCW 3499

25. (2004) 2 SCC 759

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE TWENTY SIXTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

HON'BLE the Chief Justice SRI DEVINDER GUPTA

THE HON'BLE MR JUSTICE A.GOPAL REDDY

AND

THE HONOURABLEL MR. JUSTICE C.V.RAMULU

WRIT APPEAL NO : 1221 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 06/08/2004 in WP NO : 13576 OF 2004 on the file of the High Court.)

Between:

Kalla Ramakrishna, S/o. Veeraswamy,
R/o. Peddanappali Village, Yeleswaram Mandal,
East Godavari District.

..... APPELLANT

AND

1 State Election Commission Represented by its Secretary, 3rd Floor, Budhabhavan, M.G. Road, Hyderabad.
2 R.D.O. Peddapuram, E.G. District.
3 Election Officer and Secretary, Yeleswaram Gram Panchayat, Yeleswaram Mandal, East Godavari District.

.....RESPONDENTS

For the Appellant: MR.M.KRISHNA MOHAN RAO, advocate

For the Respondent No.3: GP FOR PANCHAYAT RAJ & RURAL DEV.

For the respondent No.2 : G.P.for Revenue

For the respondent No.1: Mr. K.G.K. Prasad, Advocate

The Court made the following:

HONOURABLE THE CHIEF JUSTICE SHRI DEVINDER GUPTA

HONOURABLE SRI JUSTICE A.GOPAL REDDY

AND

THE HONOURABLE SRI JUSTICE C.V.RAMULU

WA NO.1221/2004

JUDGMENT: (per the Hon'ble Sri Justice A.Gopal Reddy)

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1. The facts giving rise to the reference before the Full Bench in the Writ Appeal may be stated in nutshell as follows:

2. Appellant's writ petition questioning the order of the Revenue Divisional Officer, Peddapuram dt.30-7-2004 dismissing his appeal filed under Rule 9(6) of the Rules framed under A.P. Panchayat Raj Act,1994 (for short "the Act") by G.O.Ms.No.755 Panchayat Raj dt. 30-11-1994 and as amended by G.O.Ms.No.279 dt. 19-5-1995 against rejection of his nomination for by-election of Ward No.3 of Peddanapalli Gram Panchayat, Yeleswaram Mandal, East Godavari District was dismissed by the learned single Judge by placing reliance upon the decision of a Division Bench of this court in ***K.RAMULU V. COLLECTOR AND DISTRICT ELECTION AUTHORITY & OTHERS*** and two others decisions, namely, ***CH.RAMACHANDRA RAO V. STATE OF ANDHRA PRADESH & OTHERS*** and ***V.NARAYANA V. ELECTION OFFICER, ALWAL MUNICIPALITY & OTHERS*** holding that the only remedy available to the appellant is to raise an election dispute under section 233 of the Act.

3. At the time of admission of the appeal before the Division Bench, the appellant relied upon the observation of the Supreme Court in ***UMESH SHIVAPPA AMBI V. ANGADI SHANKARA BASAPPA & OTHERS*** by contending that High Court will not ordinarily interfere with the elections in exercise of its powers under Art. 226 of the Constitution of India when there is an appropriate or equally efficacious remedy available in relation to election disputes. Since it was not an ordinary situation where the appellant ought to have been relegated to the ordinary remedy, which would take its own course and time when rejection of the nomination can be demonstrated without any further proof and grounds on which it was rejected are perverse and passed for extraneous considerations, the High Court can interfere by exercising its powers under Art. 226 of the Constitution of India. The said submission was favoured by the Division Bench and the matter was referred to the Full Bench. The precise question on which reference is made is contained in the order dt. 10-8-2004, which reads as under:

> "We are of the view that there is a prima facie case in favour of the appellant and so far as the exercise of extraordinary powers of this Court are concerned, the same cannot be thwarted. The restrictions imposed for exercise of the powers are self imposed restrictions by the Courts and when there is equally efficacious remedy available, the availability of adequate statutory remedy cannot be a bar and accordingly we are of the view that the decision relied upon by the learned single Judge of this court in K.RAMULU's case (1 supra) would require reconsideration that in a given facts and circumstances of the case, whether it will be permissible for this court to exercise the extraordinary power under Art. 226 of the Constitution of India and on this question, we make a reference to Full Bench."

4. Before we answer the reference, it is necessary to have an insight over Art.243-0 (b) of the Constitution, the statutory provisions under the A.P. Panchayat Raj Act, 1994 (for short 'Panchayat Raj Act')and rules made thereunder, which govern the elections.

> **"Art.243-0:** Bar to interference by courts in electoral matters,-- Notwithstanding anything in this constitution,--
>
> a. x x x x x;
>
> b. no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by

or under any law made by the Legislature of a State.

Section 233 of Panchayat Raj Act reads thus:

> "**233. Election petitions**:-No election held under this Act shall be called in question except by an election petition presented to such authority and in accordance with such rules as maybe made in this behalf."

To decide election disputes, rules were framed in G.O.Ms.No.111, Panchayat Raj, Rural Development & Relief (Elec.III) Department, dt.3-3-1995 known as "Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads Rules, 1995" (hereinafter called as "the Election Tribunal's Rules, 1995"). Rule 2 provides that no election held under the Act shall be called in question except by an election petition presented in accordance with the Rules to the Election Tribunal as defined in sub-rule (2) by any candidate or elector against the candidate who has been declared to have been duly elected or if there are two or more returned candidates against all or any such candidates. Such election petition shall be presented within thirty days from the date of declaration of the result of the election as per rule 3. Rule 12 is very much relevant for the purpose of deciding the issue involved in the present reference. Particularly, sub-rule (c) of Rule 12 envisages that if in the opinion to the Election Tribunal that any nomination has been improperly rejected, it shall declare the election of the returned candidate to be void. Rules were framed in G.O.Ms.No.755, Panchayat Raj, Rural Development and Relief (MDL-I) dt. 30-11-1994 known as "Conduct of Elections of Members and Sarpanch of Gram Panchayats, Members of Mandal Parishads and Members of Zilla Parishads Rules, 1994 (hereinafter called as "the Conduct of Election Rules, 1994"). Rule 9 reads as under:

> **9. Scrutiny of Nomination papers:-** (1) On the date appointed for scrutiny of the nominations, the candidates, the proposer of each candidate and one other person duly authorized in writing by each candidate, may attend at such time and place as may be specified under Rule 8. No other person shall be entitled to be present. The Election Officer may, however, admit such other persons as he thinks fit to assist him. The Election Officer shall give such persons all reasonable facilities to examine the nomination papers of all the

candidates, which have been received as aforesaid.

(2) The Election Officer shall then examine the nomination papers and shall decide on all objections which may be made at the time to any nomination and may either on such objection or on his own motion after such summary enquiry as he thinks necessary, reject any nomination on any of the following grounds, namely.

i. that the candidate is ineligible for election as a Member or Sarpanch of Gram Panchayat, Member of Mandal Parishad and Member of Zilla Parishad under Sections 17,18,19,155,156,232 of the Act; or

ii. x x x

iii. x x x

iv. x x x

3 to 6. x xx.

5. A bare reading of the aforementioned provision would show that the Election Officer on the date of scrutiny of nomination papers shall decide all objections to any nomination and may either on such objection or on his own motion, after such summary enquiry, reject any nomination on any of the grounds as referred to in the above rule. If the candidate whose nomination has been rejected on any grounds specified under sub-rule 2 may prefer an appeal against the decision of the Election Officer under sub-rule (6) of rule 9 before the Revenue Divisional Officer in the case of Gram Panchayat and Mandal Parishad election. If the appellate authority allows the appeal, further procedure will be followed by allotting the symbol etc., and elections will take place according to schedule. If the appeal is dismissed affirming the rejection of nomination, the remedy available is by way of an election petition.

6. We have heard the learned counsel for the appellant as well as learned Advocate General for the respondents.

7. The substratum of the arguments of the learned counsel for the appellant is that once the Returning Officer rejects the nomination of the candidate mala fide and/or for any extraneous consideration and such rejection is perverse and vitiated due to malice in law, the High Court in appropriate case can exercise its extraordinary

jurisdiction under Art.226 to correct the illegality. Dismissing of the writ petition by the learned single Judge by placing reliance on the decisions of ***K.RAMULU V. COLLECTOR AND DISTRICT ELECTION AUTHORITY & OTHERS***(1 supra), ***CH.RAMACHANDRA RAO V. STATE OF ANDHRA PRADESH & OTHERS*** (2 supra) and ***V.NARAYANA V. ELECTION OFFICER, ALWAL MUNICIPALITY & OTHERS*** (3 supra) is not justified and this is a fit case where this court must interfere and remedy the situation.

8. Reliance has been placed by the learned counsel for the appellant on numerous decisions viz., **PONNUSWAMI v. RETURNING OFFCIER; LAKSHMI CHARAN SEN v. A.K.M. HASSAN UZZAMAN AND OTHERS; S.T. MUTHUSAMI v. K.NATARAJAN AND OTHERS; KIHOTA HOLLOHON v. ZACHILHU AND OTHERS; UMESH SHIVAPPA AMBI AND OTHERS v. ANGADI SHEKARA KBASAPPA AND OTHERS (4** supra**) S. FAKRUDDIN AND OTHERS v. GOVT. OF A.P. AND OTHERS; G. KANAKA DURGA v. STATE ELECTION COMMISSIONER AND OTHERS; and KAYATHI JAYAPAL REDDY V. STATE ELECTION COMMISSIONER AND OTHERS**

9. Reliance has also been placed by learned counsel for the appellant on the following decisions, not dealing with election matters, that even when statutory alternate remedy is available, the High Court, in appropriate cases, is not precluded from exercising extraordinary jurisdiction under Article 226 of the Constitution.

WHIRLPOOL CORPORATION v. REGISTRAR OF TRADE MARKS, MUMBAI AND OTHERS; ABL INTERNATIONAL LIMITED AND ANTOHER v. EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LTD AND OTHERS; STATE OF TRIPURA v. MANORANJAN CHAKRABORTY AND OTHERS; HARBANSLAL SAHNIA AND ANOTHER v. INDIAN OIL CORPORATIN LIMITED AND OTHERS; CHAIRMAN &. MD.BPL LTD v. S.P.GURURAJA AND OTHERS; D.L. SURESH BABUKL AND OTHERS v. INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA AND OTHERS; UPPARI SUSHEELA v. STATE ELECTION COMMISSIONER, HYDERABAD AND OTHERS; and STATE OF A.P. AND OTHERS v. GOVERDHANLAL PITTI.

10. Most of the decisions relied upon are not on the question arising for determination before us but are decisions laying down the general principles that existence of an alternate remedy is not an absolute bar in entertaining a writ petition

under Article 226 of the Constitution of India. We do not consider it necessary, therefore, to refer to the several decisions cited before us on the general proposition, but, we would like to deal with only those decisions which are directly on the proposition i.e. whether existence of an alternate remedy by way of election petition is an absolute bar for entertaining the writ petition, and, can the High Court in appropriate cases exercise its extraordinary jurisdiction even in election matters?

11. The issue involved in our opinion seems to be squarely covered by a decision of the Constitution Bench in the case of ***PONNUSWAMI*** (5 supra), which is a binding precedent and all the cases decided subsequently on the point have consistently followed the same. The appellant therein was one of the persons who had filed nomination papers for election to the Madras Legislative Assembly from the Namakkal Constituency in Salem district. On 28-11-1951, the Returning Officer for that constituency took up for scrutiny the nomination papers filed by the various candidates and on the same day rejected the appellant's nomination paper on certain grounds. The appellant thereupon moved the High Court under Art. 226 of the Constitution praying for a writ of certiorari to quash the order of the Returning Officer rejecting his nomination paper and to direct the Returning Officer to include his name in the list of valid nominations to be published. The High Court dismissed the appellant's application on the ground that it had no jurisdiction to interfere with the order of the Returning Officer by reason of the provisions of Art. 329 (b) of the Constitution. The appellant's contention before the Supreme Court was that the view expressed by the High Court is not correct, that the jurisdiction of the High Court is not affected by Art. 329 (b) of the Constitution and that he was entitled to a writ of certiorari in the circumstances of the case. In the light of the arguments, the Supreme Court examined the question that whether the law of elections in the country contemplates that there should be two attacks on matters connected with election proceedings, while one the election process is on, on by invoking the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution (the ordinary jurisdiction of the Courts having been expressly excluded), and another after they have been completed by means of an election petition. It was held that to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act. Justice Fazal Ali speaking on behalf of the Bench expressed his views that the correct position seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at

an intermediate stage before any Court. He further observed:-

> It seems to me that under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question Article 392 (b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may be raised under the law to call the election in question, could be urged. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other Court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like Art. 329 (b) and in setting up a special tribunal. Any other meaning ascribed to the words used in the article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it.

12. On analyzing the provisions of the Representation of the People Act, it was held that it will be a fair inference from the provisions of Act to state that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage. The arguments that the Representation of the People Act was enacted subject to the provisions of the Constitution, it cannot bar the jurisdiction of the High Court to issue writs under Art. 226 of the Constitution was turned down saying that by reading the Act along with Art. 329 (b). it will be noticed that the language used in that Article and in S. 80 of the Act is almost identical, with this difference only that the article is proceeded by the words "notwithstanding anything in this Constitution". Such words were held to be quite apt to exclude the jurisdiction of the High Court to deal with any matter, which may arise while the elections are in progress. The Constitution Bench also examined the scheme of election law in India as well as in England and briefly summed up its conclusions as follows:-

> (1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time-schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the

election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election;" and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any Court while the election is in progress.

13. On the extent of the powers of the High Court under Arts. 226 and 227 and of Supreme Court under Art. 136 of the Constitution, no opinion was expressed and the question was left open saying that the same will have to be decided on a proper occasion.

14. After noticing that besides the Madras High Court, seven other State High Courts have held that they have no jurisdiction under Art. 226 of the Constitution to entertain petitions regarding improper rejection of nomination papers the Constitution Bench in the case of ***PONNUSWAMI*** (5 supra) held that the said view is correct and must be affirmed.

15. In the case of ***LAKSHMI CHARAN SEN*** (6 supra), questioning the validity of several provisions of the Representation of the People Act, 1951, the Registration of Electors Rules, 1960 and the Conduct of Election Rules some voters in the electoral roll of the West Bengal Legislative Assembly filed writ petitions before the Calcutta High Court asking for writs of mandamus and certiorari directing that the instructions issued by the Election Commission should not be implemented by the Chief Electoral Officer and others, that the revision of electoral rolls be undertaken de novo, that claims, objections and appeals in regard to the electoral roll be heard and disposed of in accordance with the rules and until the rolls were duly revised no notification be issued under Section 15(2) of the Representation of the People Act, 1951 calling for election to the West Bengal Legislative Assembly and obtained interim orders from the High Court. The said cases were transferred on appeal to the Supreme Court. The Supreme Court after considering the ratio laid down in the case of ***PONNUSWAMI*** (5 supra) and ***MOHINDER SINGH GILL V. CHIEF ELECTION COMMISSIONER, NEW DELHI*** and after approving the views taken in

PAMPAKAVI RAYAPPA BELAGALI v. B.D. JATTI *that entries made in an electoral roll of a constituency can only be challenged in accordance with the machinery provided by the Act and not in any other manner or before any other forum unless, some question of violation of the provisions of the Constitution is involved*; and the view taken in ***MOHINDER SINGH GILL's*** case (20 supra), namely, *every step from start to finish of the total process constitutes 'election', not merely the conclusion or culmination;* and the conclusion of Justice Krishna Iyer, namely, *the rainbow of operations, covered by the compendious expression 'election' thus commences from the initial notification and culminates in the declaration of the return of a candidate,* set aside the interim order passed by the Calcutta High Court holding that though the High Court did not lack the jurisdiction to entertain writ petition and to issue appropriate directions therein further held that no High Court in the exercise of its powers under Art. 226 of the Constitution should pass any orders, interim or otherwise, which has the tendency or effect of postponing an election, which is reasonably imminent and in relation to which its writ jurisdiction is invoked. The Supreme Court observed:

> **"…..**India is an oasis of democracy, a fact of contemporary history which demands of the courts the use of wise statesmanship in the exercise of their extraordinary powers under the Constitution. The High Courts must observe a self imposed limitation on their power to act under Article 226, by refusing to pass orders or give directions which will inevitably result in an indefinite postponement of elections to legislative bodies, which are the very essence of the democratic foundation and functioning of our Constitution. That limitation ought to be observed irrespective of the fact whether the preparation and publication of electoral rolls are a part of the process of 'election' within the meaning of Article 329(*b*) of the Constitution…"

16. In **S.T. Muthusami's** case also the Supreme Court considered similar question as has arisen in this case and followed the principles as laid down in **Ponnusawami's** case. In the said case, appeal by Special Leave was filed against the judgment of Division Bench of the Madras High Court. The Division Bench had taken the view that issuing of errata notification by Returning Officer amounted to a very serious breach and interference under Article 226 of the Constitution of India was called for. Thus, the question before the Supreme Court was that once election

process had commenced, interference in the said election process was or was not justified in writ jurisdiction on the ground of error in allotment of symbols. The Supreme Court held that the exercise of jurisdiction by High Court under Article 226 of the Constitution was not justified. The parties who are aggrieved by result of the election can question validity of the election only by an election petition, which is an effective alternate remedy.

17. Learned counsel for the appellant laid much emphasis on what has been stated by Two-Judge Bench of the Supreme Court in **Umesh Shivappa Ambi's** case (supra) that once an election is over, the aggrieved candidate will have to pursue his remedy in accordance with the provisions of law and the High Court will not ordinarily interfere with the elections under Article 226. It was thus urged that since the Supreme Court had held that High Court will not ordinarily interfere in election matters, the same would amount to taking a view that, in appropriate cases, it will still be permissible for the High Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India and, therefore, entertaining of writ petition is not an absolute bar. The submission made by the learned counsel for the appellant is wholly misplaced. While making the aforementioned observations, the Two-Judge Bench of the Supreme Court in **Umesh Shivappa Ambi's** case referred to the decision in **K.K. SHRIVASTAVA v. BHUPENDRA KUMARI JAIN** wherein with respect to the decision in **Punnuswami's** case, the Three-Judge Bench of the Supreme Court had not carved out any exception. The Three-Judge Bench in **K.K. Shrivastava's** case had observed that:

> It is well settled law that while Art.226 of the Constitution confers a wide power on the High Court there are equally well-settled limitations, which this Court has repeatedly pointed out on the exercise of such power. One of them which is relevant for the present case is that where there is an appropriate or equally efficacious remedy the Court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy, which almost reads in mandatory returns. While we need not in this case go to the extent of stating that if there are exceptional or extraordinarily circumstances the Court should still refuse to entertain a writ petition, it is perfectly clear that merely because the challenge is to a plurality of returns of elections, therefore, a writ petition will lie is a fallacious argument.

18. In ***Fakruddin's case*** (9 supra), Full Bench of this court considered the vires of

rules issued in G.O.Ms.No.755, Panchayat Raj, Rural Development and Relief (MDL-I) Department dt. 30-11-1994 as amended from time to time providing for administrative machinery for the conduct of elections and introduced authorities to share the power and functions of the Election Commission on reserving certain Gram Panchayats in favour of Backward Classes etc., in the light of the bar of interference by courts in electoral matters contained in Art. 243-O of the Constitution and after elaborately dealing with the aspect took the view that constitutional jurisdiction of the High Court under Art. 226 remains even after commencement of election process and struck down the rules holding that the rules issued in G.O.Ms.No.755 spread over in such a way that it is difficult to say that one rule is bad and the other is good insofar as they divide the powers of the State Election Commissioner and create independent authority, of course subject to the control and direction of the State Election Commissioner and it is for the State Election Commissioner to prepare electoral rolls and conduct elections. Against the above judgment, SLP Nos.14407-14412 of 1995 were preferred to the Supreme Court and Supreme Court initially granted status-quo on 28-7-1995 relating to the operation of the judgment of the above case. Subsequently, on leave to appeal being granted, the matter was finally heard in Civil Appeal Nos.9345-9350 of 1995 and while reserving the judgment the Supreme Court passed the following order:

> "Since the elections have already been held, there is urgency to complete the process of election. We, therefore, stay the operation of the impugned judgment of the High Court in toto. The net result would be results of the elections can be declared by the Election Commission. The parties may file their written submissions, if they so desire, within one week."

Later, the Supreme Court disposed of C.A Nos.9345-9350 of 1995 on 8-4-1997 with the following order:

> "It is agreed that elections are over. The results have been declared. The successful candidates have taken the oath of office. In view of the subsequent events it is not proper for this Court to consider the matters in detail at this stage. It is open to the aggrieved parties, if so advised, to take appropriate proceedings before appropriate forum wherein all the questions raised herein can be raised. If any proceedings are initiated, the appropriate forum will decide the matter as expeditiously as possible unfettered by the judgment of the High Court. The appeals are dismissed accordingly."

Once the order of the Full Bench merged with the above order of Supreme Court, any observation made by the Full Bench of this court on entertaining of the writ petitions when the election process has commenced stand obliterated.

19. Learned counsel seeking aid from the observation of the Karnataka High Court in the case of ***D.L.SURESH BABU*** (16 supra) wherein rejection of the nomination was found to be absurd. The Karnataka High Court interfered with the election process in exercise of its jurisdiction under Article 226 of the Constitution and directed to include the name of the petitioner in the list of valid nomination papers and to conduct elections on that basis. Reliance on this decision is wholly misplaced. With due respect to the judges of Karnataka High Court, the view so taken by them is contrary to the law laid down by the Constitution Bench in **Ponnuswami's case** (supra)

20. In ***S.S.S.J.S.(M.M) S.D.U. SANSTHA V. STATE OF MAHARASHTRA*** where drawing of election schedule for holding elections to the society by the Collector, unsuccessfully challenged before the High Court alleging irregularity in preparation of electoral rolls contending that the electoral roll being the substratum of the election for constituting the Managing Committee and the same having not prepared and finalized in accordance with the mandatory rules, no election can beheld on such electoral roll. The Supreme Court while dismissing the appeal held that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, the High Court should not have stayed the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. Once the result of the election is declared, it would be open to the parties aggrieved to challenge the election of the returned candidate, by means of an election petition before the election tribunal.

21. This court in WP(SR) No.34603/2004 dt. 5-4-2004 considered the correctness of the order passed by the Returning Officer and set-aside the order passed by the Returning Officer to treat the writ petitioner as an independent candidate holding that the irregularity, if any, found in Form-B was technical and trivial. On appeal, the Supreme Court in the said case reported as ***MANDA JAGANATH V. K.S.RATHNAM,*** while rejecting the contention of the respondent held that the case of the respondent came within the exceptions noted by the Supreme Court in

M.S.Gill's case (supra) which permits filing of a writ petition under Art.226 of the Constitution and held that not allotting a symbol claimed by the first respondent, the Returning Officer had not stalled or stopped the progress of the election. The said respondent had been treated as an independent candidate and was permitted to contest with a symbol assigned to him as an independent candidate and consequently there was no question of stalling the election. The grievance as to such non-allotment of the symbol will have to be agitated in an election petition (if need be) as held in ***S.T.MUTHUSWAMI'S*** *case (supra)* and allowed the appeal by setting aside the interim-order granted by this court**.** The only exception, which can be said to have been carved out for entertaining the writ petition, would be in a situation for continuance of election process, which has commenced by issuance of notification and not for stalling it.

22. Similarly the Supreme Court in ***RAM PHAL KUNDU V. KAMAL SHARMA*** approved the ratio laid down in **Ponnuswmi's** case (5 supra) and **Mohinder Singh Gill's** case(20 supra) that once the nomination paper of a candidate is rejected, the Act provides for only one remedy, that remedy being an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage.

23. The negative language used in Art.243-0 (b) is parimateria same as in Art. 329(b), namely, no election shall be called in question except by an election petition presented to such an authority and in such manner as provided for by any law made by the Legislature of a State. The same negative language is used in Section 233 of A.P. Panchayat Raj Act, 1994, which contemplates, that any election conducted under the Act can be questioned by way of an election petition in accordance with the rules as may be made in that behalf. Election Tribunal's Rules, 1995 provide the procedure to challenge such election, which includes rejection of the nomination as per the various decisions as referred to above. The rejection of the nomination even as per the ratio in **Manda Jagannath's case** (supra), where an exception seems to have been carved out, as referred to above, will not have the effect of stalling or stopping the progress of the election where this court can interfere with such an order.

24. We are, therefore of the considered view that the Supreme Court right

from **Ponnuswami's** case (5 supra) has consistently laid down the law that election covers the entire process i.e from the issue of the notification under the relevant legislation to the declaration of the result. Having regard to the important functions which the legislatures have to perform in democratic countries, it had always been recognized to be a matter of first importance that elections should be concluded as early as possible according to the time schedule and all controversial matters and all disputes arising out of elections should be postponed till the elections are over. The person interested in questioning the elections has to wait till the election is over and institute a petition in accordance with the law calling in question the election of the successful candidate. Any matter, which has the effect of vitiating an election, should be brought up only at appropriate stage in an appropriate manner before a Special Tribunal constituted for the purpose and should not be brought up at an intermediate stage before any Court. In other words, in election matters, only one remedy is available, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage. High Court should not exercise its extraordinary jurisdiction under Article 226 of the constitution to entertain petitions regarding improper rejection of nomination papers.

24. Accordingly, we hold that the view expressed by this court in ***K.RAMULU V. COLLECTOR AND DISTRICT ELECTION AUTHORITY & OTHERS*** **(1 supra),** ***CH.RAMACHANDRA RAO V. STATE OF ANDHRA PRADESH & OTHERS*** **(2 supra) and** ***V.NARAYANA V. ELECTION OFFICER, ALWAL MUNICIPALITY & OTHERS*** **(3 supra)** is in conformity with the above consistent view taken by the Supreme Court

The reference is accordingly answered.

DEVINDER GUPTA, CJ

A.GOPAL REDDY,J

_____

26th October, 2004 C.V.RAMULU,J

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